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The Woods Quality Cabinetry Company and Greater Pennsylvania Regional District Council of Carpenters a/w United Brotherhood of Carpenters & Joiners of America. Case 6-RC-12194

December 31, 2003

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on April 4, 2003, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots showed 31 votes for and 26 against the Petitioner with 3 challenged ballots, a number insufficient to affect the election results.

The Board has reviewed the record in light of the Employer's exceptions and brief. Contrary to the Regional Director, we find merit in the Employer's exceptions, and, therefore, we set aside the election and direct that a second election be held.

The facts are not in dispute. On April 3, 2003, 27 hours before the April 4, 2003 election, the Employer notified the Region that the notice of election and sample ballot incorrectly designated the Petitioner as affiliated with the AFL-CIO.¹ Although the Employer requested that the Region correct the notice and official ballots and circulate a letter explaining the change, the Region declined to take any action, and the election was held notwithstanding the incorrect designation.

In its objections, the Employer contends that the erroneous designation of the Petitioner as affiliated with the AFL-CIO and the Region's failure to correct the designation warrant setting aside the election. The Employer claims that the question of Petitioner's AFL-CIO affiliation was both material to, and an issue in, the campaign. According to the Employer, the Petitioner informed the employees, at meetings in March 2003, that it was not affiliated with the AFL-CIO, and the Employer subsequently showed the employees a video on the morning of April 3, 2003, also indicating that the Petitioner had withdrawn from, and was no longer affiliated with, the

¹ After being affiliated with the AFL-CIO for many years, the Petitioner's parent organization withdrew from the AFL-CIO in March 2000.

AFL-CIO. The Employer argues that the erroneous designation undermined the Employer's credibility, created confusion for employees, caused the employees who voted "yes" to vote for a nonexistent union, and caused employees to vote for the Petitioner because they believed (incorrectly) that they were joining the AFL-CIO. Finally, the Employer argues that the erroneous AFL-CIO designation could have affected the election results, particularly as the Petitioner won by only 5 votes and there were 3 challenged ballots.

The Regional Director found that the Petitioner's affiliation was neither material to, nor an issue in, the campaign, and that the Employer failed to meet its burden of establishing that employees were confused about the union for which they were voting, or that the employees' votes were affected by the erroneous AFL-CIO designation. The Regional Director further found there could not have been any confusion as to the Petitioner's identity and that it was clear to the employees that they were voting on whether they wanted to be represented by the Petitioner. Finally, the Regional Director reasoned that it would be too confusing and too disruptive of the election process to change only the ballot, which would then have been inconsistent with the notice of election, as this could have generated discussion about the affiliation without giving either party an opportunity to address the issue.

We disagree with the Regional Director. We find that the erroneous designation on the notice and ballot indicating that the Petitioner was affiliated with the AFL-CIO reasonably tended to interfere with the election process so that the election should be set aside.

The question of whether a petitioner is affiliated with the AFL-CIO is a material and substantial issue and has the potential to significantly impact the employees' choice of bargaining representative. See *Nelson Chevrolet Co.*, 156 NLRB 829 (1966).² See also *Douglas Aircraft Co.*, 51 NLRB 161 (1943).³

² In *Nelson*, authorization cards used by the organizers to enlist members expressly held out the local as affiliated with an international union, which was affiliated with the AFL-CIO. Subsequently, however, the international union dissolved its affiliation with the local, and the local reorganized as an independent union. In those circumstances, the Board found that the authorization cards signed by the employees could not be considered reliable designations of the employees' choice of the local in its present independent status as their bargaining representative.

³ In *Douglas*, the International Association of Machinists (IAM) withdrew its affiliation with the AFL after issuance of the Regional Director's decision and direction of election; however, sample ballots containing the AFL designation had been posted at the plant. Two days before the election, the Region posted supplementary notices alongside the sample ballots stating that "AFL" would not appear on the official ballot. Noting the IAM's claim that its affiliation with the AFL had

Here, the designation of the Petitioner's affiliation with the AFL-CIO was erroneous on both the notice and the ballots. That the affiliation issue was material to the election campaign was reflected by the fact that both parties specifically addressed it when meeting with the unit employees. Thus, the Petitioner informed the employees of its withdrawal from the AFL-CIO early in the organizing campaign. Further, after the notice of election was posted with its incorrect language, the Employer likewise informed employees in a video, shortly before the election, that the Petitioner was no longer affiliated with the AFL-CIO. The discrepancy between the parties' message, and the conflicting notice and ballot language, reasonably would tend to confuse employees with respect to the affiliation status of the union that they were being asked to vote on as their bargaining representative. That is, seeing the notice and receiving a ballot with the AFL-CIO affiliation could easily lead employees to believe that if the Petitioner won, they would be represented by an AFL-CIO affiliate. The notice and ballot likewise could call into question the Employer's credibility shortly before the balloting took place.⁴

Our colleague says that the Employer and the Union were saying the same thing, viz that the Union was *not* affiliated with the AFL-CIO. However, the significant point is that the NLRB, the neutral party holding the election, was saying precisely the opposite in its notices and ballots. And, the NLRB notices and ballots were incorrect. It is this fact that reasonably caused confusion, and it is this fact that challenged the credibility of the Employer shortly before the election.

Contrary to our dissenting colleague's contention, we are not adopting a per se rule that an error in the designation of affiliation necessarily invalidates an election. Rather, we have reached our conclusion that the election in this case must be set aside based on the particular facts before us. Further, our conclusion is based on objective facts. It is our colleague who bases her conclusion on

been stressed throughout the organizing campaign, and the short period of time between the withdrawal from the AFL and the election, the Board set aside the election because the employees may have been misled by the last-minute deletion of the AFL affiliation designation from the ballot, and because the union did not have a sufficient opportunity to explain the deletion.

⁴ Although the Petitioner informed employees that it was no longer affiliated with the AFL-CIO, this occurred weeks before the election and at a time when there were not contrary messages being disseminated. Conversely, when the Employer told employees of the disaffiliation, it was shortly before the election, and the Employer's message was thus sandwiched in time between the erroneous notice and the erroneous ballot language stating that the Petitioner was affiliated with the AFL-CIO.

speculation and on evidence of employees' subjective reactions.⁵

Our colleague says that we have "punished employees, who freely chose the union, for the Board's mistake." That argument presumes the resolution of the fundamental issue in this case, viz whether the choice was free, i.e., whether it was clouded by the confusion concerning the affiliation of the union. In addition, no one is being punished. To the contrary, we are simply giving employees an opportunity to vote in a clear and unambiguous context.

We disagree with our dissenting colleague that the affiliation issue was of "little moment" as evidenced by the fact that the election agreement executed by the parties included this error. The election agreement is a document entered into by the parties, and is not intended for distribution to employees. Further, the fact that the parties made a particular point of informing employees of the correct facts regarding affiliation belies our colleague's claim.

We are mindful that the Board has declined to set aside an election where there have been minor errors in the notice of election and/or ballots. See, e.g., *Mattison Machine Works*, 120 NLRB 58 (1958) (ballots addressed to the employees of *Mattison Machine Manufacturing Co.* and not *Mattison Machine Works*); *V. LaRosa & Sons, Inc.*, 121 NLRB 671 (1958) (local union's number incorrectly preceded name of union on ballot). In contrast, however, the error in the notice of election and ballots here was not insignificant, and confused the employees regarding the important issue of whether or not the Petitioner was affiliated with the AFL-CIO. The significance of the issue lies in the fact that the issue concerns the very identity of the union. In addition, contrary to our dissenting colleague, the affiliation or nonaffiliation of a union is a significant matter, inasmuch as it deals with such matters as assistance or nonassistance from a larger organization and the autonomy or dependence of a union.

Accordingly, as we conclude that the incorrect designation of the Petitioner as affiliated with the AFL-CIO on the notice of election and ballots interfered with the election process, we set aside the election and direct that a new election be held.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to

⁵ One of her three factors is whether evidence has been presented that the votes of employees may actually have been affected by the mistake.

vote are those employed during the payroll period ending immediately before the date of the notice of second election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their employee status during the eligibility period and their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote where they desire to be represented by the Greater Pennsylvania Regional District Council of Carpenters a/w United Brotherhood of Carpenters & Joiners of America.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the notice of second election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with their requirement shall be grounds for setting aside the election whenever proper objections are filed.

Dated, Washington, D.C. December 31, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS

MEMBER LIEBMAN, dissenting.

The majority orders a new election because the Board's election notice, sample ballot, and ballot erroneously identified the petitioning union as affiliated

(through its parent union) with the AFL-CIO, when in fact the affiliation had ended 3 years earlier. Because that error clearly was harmless under the circumstances here—there is no good evidence that voters cared about the affiliation issue in the slightest—I would certify the results of the election. Instead, my colleagues effectively punish employees, who freely chose the union, for the Board's mistake.

The petition in this case was filed by the Greater Pennsylvania Regional Council of Carpenters. The parent union of this labor organization is the United Brotherhood of Carpenters & Joiners of America, an international union. When preparing the Stipulated Election Agreement, drawn also from data in its files, the Region inserted on the stipulation the correct name of the Petitioner's affiliated parent union. The Region also corrected the Petitioner's name as the Greater Pennsylvania Regional District Council of Carpenters. However, the Region additionally, and incorrectly, inserted the designation that the parent international union was affiliated with the AFL-CIO.¹

The majority sets aside the election because, in its view, the issue here concerns the "very identity" of the union on the ballot and because affiliation is "inherently a significant matter." Contrary to my colleagues, I would not adopt what appears to be a per se rule that an error in the designation of a parent international union, as an AFL-CIO affiliate or not, necessarily invalidates an election. In my view, resolution of this matter, as with most election-objection issues, properly turns on the facts of the case at hand.² Among the relevant facts in this inquiry are: (1) whether the matter of AFL-CIO affiliation was an issue in the campaign; (2) the nature of the information distributed to employees regarding affiliation or nonaffiliation during the period preceding the election; and (3) whether evidence has been presented that the votes of employees may actually have been affected by the mistake. Here, all of the relevant facts support overruling the objections and certifying the results of the election.

First, as the Regional Director found, the matter of whether the Petitioner's parent organization was affiliated with the AFL-CIO was not an issue in the election campaign. The majority contends the affiliation issue

¹ The parent union was no longer affiliated with the AFL-CIO at the time of the election, having withdrawn from the AFL-CIO 3 years earlier. The notice of election and sample ballot, as well as the official ballot at the election, also incorrectly identified the parent union as affiliated with the AFL-CIO.

² See *V. LaRosa & Sons, Inc.*, 121 NLRB 671 (1958) (overruling objections that alleged mistake on the ballot, based on examination of record evidence, including nature of campaign and failure of voters to seek assistance regarding ballot).

was “material” to the election campaign because the parties addressed the matter when meeting with employees. But many things are said during an election campaign, and surely not every topic discussed is a “material” issue in the campaign—let alone one so important that an election ought to be set aside when factual discrepancies later arise. There is no evidence that the matter was important to any voters in this case.³

Second, aside from whether or not the matter is characterized as “material” to the campaign, more significant is what the parties actually told employees about the subject of affiliation. Here, it is clear that both the Employer and the Petitioner correctly told employees the same thing: that the parent organization was *not* affiliated with the AFL–CIO. Put another way, the record shows that the matter simply was not a campaign issue. Indeed, it appears that the matter of AFL–CIO affiliation of the parent organization was of such little moment during the campaign that counsel for both the Employer and the Petitioner signed the election stipulation without noticing that it mistakenly included the AFL–CIO designation and that 10 days elapsed from the mailing of the notice of election and sample ballots to the date that the Employer’s counsel finally noticed the mistake. Further, there is no evidence that any unit employee noticed the discrepancy prior to the election.⁴

Third, there is no evidence that any employees were influenced during the election by the mistake concerning the affiliation of the parent organization. The only record evidence that was presented in support of this matter is an affidavit by the Employer’s coowner stating that, at some unspecified time after the election, “several employees, whose names I don’t recall, made statements like ‘I didn’t think they were part of the AFL–CIO’ or words to that effect.” These alleged statements hardly demonstrate, or even imply, that anyone’s vote was actually or likely influenced by the mistaken AFL–CIO designation. Even assuming that some employees may have been confused by the mistake, the question is whether

that confusion—about an issue not material to the campaign—interfered with their free choice. Of that there is no evidence, and it is wrong to upset the election based on anything less. In any event, it is noteworthy that, in setting aside the election, the majority does not rely on the statements set forth in this affidavit.⁵

Apart from the absence of record evidence that might support the notion that the mistake regarding the affiliation status of the parent organization influenced the election, we are left with the majority’s contention that the matter goes to the “very identity” of the party seeking to represent the employees. But let us be clear about the alleged confusion over the “identity” of the labor organization here. There is no confusion as to the identity of the local union (Greater Pennsylvania Regional District Council of Carpenters). Nor is there any confusion as to the local union’s affiliation with the parent international union (United Brotherhood of Carpenters & Joiners of America). Compare, *V. LaRosa & Sons*, *supra* (confusion over identity of local unions on ballot). The alleged confusion here pertains to the more remote matter of the parent union’s affiliation with the AFL–CIO. And, as the mistake concerns a matter that is more remote than a mistake over the identity of a local union, or the identity of its parent, it is far less likely that the mistake would affect the election, even apart from the absence of record evidence here demonstrating such an effect.

Finally, the question of whether an affiliation, AFL–CIO or otherwise, or even a change in the identity of a parent labor organization, truly alters the “very identity” of a representative local union, as the majority asserts, is a factual question that, in other contexts, turns on often complex issues of continuity based on examining the totality of circumstances. See generally *Western Commercial Transport*, 288 NLRB 214 (1988). Accordingly, the majority’s contentions regarding the “very identity” of the Petitioner, based solely on the affiliation or nonaffiliation status of the parent organization, is hardly self-evident.⁶

³ As the Regional Director found, the Employer distributed 11 separate pieces of literature during the course of the campaign, which included multipage attachments, and yet did not mention AFL–CIO affiliation until just before the election, when the subject was referred to in a video presentation. The Regional Director concluded, as a factual matter, that the subject was mentioned “in passing” during the campaign.

⁴ Notwithstanding that the Petitioner and the Employer said the same thing to employees about AFL–CIO affiliation, my colleagues infer that it is the Employer whose “credibility” was called into question because the Employer’s one-time reference to the subject occurred closer to the election. This inference, in my view, is quite a leap, especially since it appears that the Petitioner also mentioned the subject, its message was identical to the Employer’s, and, in any case, the subject hardly affected anyone’s credibility, given its insignificance.

⁵ The Regional Director found the statements in the affidavit did not warrant an evidentiary hearing, and no party (nor my colleagues in the majority) assert that a hearing was required.

⁶ In setting aside the election, the majority relies on cases that are readily distinguishable. In *Nelson Chevrolet Co.*, 156 NLRB 829 (1966), which is not an election case, a local union felt it important to affiliate with an AFL–CIO parent union. Thus it affiliated with the Distillery Workers, an AFL–CIO affiliate, and its authorization cards expressly held out the union as an affiliate of the Distillery Workers. Later, the Distillery Workers revoked the local union’s charter because of financial irregularities, and the union thereafter operated as an independent union. Of critical importance in *Nelson*, the union’s affiliation with the parent was crucial to the local union’s ongoing organizational effort and its internal structure was significantly affected by the loss of affiliation; the unit employees were unaware of the revocation of the

In sum, I see no basis on this record for concluding that the mistaken designation of the Petitioner's parent union as an AFL-CIO affiliate interfered with employee free choice. Rather, I fear, it is our own decision setting aside the election which has that result.

Dated, Washington, D.C. December 31, 2003

Wilma B. Liebman,

Member

NATIONAL LABOR RELATIONS BOARD

charter from the Distillery Workers; and the issue presented was whether the employer violated Sec. 8(a)(5) by failing to recognize the union, under long-abandoned case law requiring recognition of a union based on a card check. The Board found that the stale authorization cards were insufficient to warrant a bargaining obligation. In the present case, there is no actual change of status in the local union, AFL-CIO status was not an issue in the campaign, and the issue is whether an election should be set aside and not whether to issue a bargaining order based on stale authorization cards. *In Douglas Aircraft Co.*, 51 NLRB 161 (1943), a case arising before the merger of the AFL and the CIO, the Board set aside a two-union election in which AFL affiliation was stressed during the campaign because it had monetary implications for members of AFL affiliates, who were concerned about additional fees, and one of the unions on the ballot was a CIO affiliate. Here, as noted, affiliation was not an issue in the campaign, much less a monetary issue to unit employees.